IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 6997 of 2004

Between:

1 The Deputy Director of Horticlture, Government Gardens, Public Gardens, Hyderabad.
2 The Commissioner & Director of Horticulture, Government Gardens, Public Gardens, Hyderabad.
3 The Government of A.P., represented by the Secretary, A&C (Horti), Department, Secretariat, A.P., Hyderabad.

..... PETITIONERS

AND

1 Sri B. Eshwaraiah, Fitter, Public Gardens, Hyderabad.
2 Sri Ghouse Khan, Fitter, Public Gardens, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ or direction more particularly one in the nature of Writ of Certiorari and to call for records connected with order dated 05-9-2003 in O.A. No. 8192 of 2002 on the file of the Hon'ble A.P. Administrative Tribunal, Hyderabad and quash and set a side the same as erroneous and contrary to law.

Counsel for the Petitioners: GP FOR SERVICES I

Counsel for the Respondents: MR.V.N.SRIVASTAV

The Court made the following:

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ORAL ORDER: (per GB.J.)

The Writ Petition is filed by the State impugning the order of A.P. Administrative Tribunal (for short Tribunal) in O.A.No.8192 of 2002, dated 5.9.2003.

2. The respondents were initially appointed as Malis in the Horticulture Department. However, they were promoted as Fitters on temporary basis in the year 1992. It is also the case of the Department as well as the respondents that the respondents did not possess the ITI Certificates. Though in G.O.Ms.No.891, Public Works (Ser.IV) Department, dated 2.9.1974, the requirement for appointment to the category of Fitter is one should possess ITI Certificate, the respondents were promoted on the basis of Competency Certificate issued by the recognized authority and also they had completed five years of service as Malis. After the revision of pay scales came into force in 1986, the respondents requested the authorities to fix their pay in the revised pay scales treating them as Fitters, but the said request was rejected by the authority concerned by his order dated 22.7.1994. But, however, again second time when they made a representation to the Government, the same was also rejected by an order dated 10.7.2001. Assailing the said rejection, they filed the above OA before the Tribunal. The Tribunal found that their promotion was in accordance with the procedure laid down from the category of Malies to the Fitters in the Horticulture Department and therefore having been fulfilled the requisite qualification as stated in the administrative orders, they ought to be given the scale of Rs.1010-1800 as if they are qualified Fitters, and accordingly allowed the said OA and directed the authorities to fix the pay of the respondents in the scale of Rs.1010-1800 in 1986 pay scales and also revise the same in the corresponding pay scales in 1995 and 1999, but, however, the monetary benefit was directed to be given only from the date of the filing of the above OA. Assailing the said decision, the present Writ Petition has been filed by the State.

3. The learned Government Pleader for Services-I submits that the very

promotion of the respondents is not sustainable inasmuch as they did not possess ITI qualification. He further submits that their request was rejected by the Government as early as on 22.7.1994 and they did not take any steps to challenge the same and therefore they could not approach the Government for second time and hence their plea is barred by limitation. He also submits that there are any amount of unexplained laches on the part of the respondents.

4. On the other hand the learned counsel for the respondents submits that there are no statutory rules with regard to the promotion of Malies to the category of Fitters, but, however, the administrative orders were issued reserving posts of Fitters in the ratio of 1:1 to Malies and other categories working in the Horticulture Department, and it was also decided that five years experience with Competency Certificate should be taken as criterion for promoting them, and since the respondents have fulfilled the qualification, their promotions cannot be said to be illegal or contrary to law. The learned counsel would also submit that when the service conditions are not governed by the statutory rules, they can be brought into effect by executive order and such a new condition remain in force till it is repealed by further executive order or the Rule framed under Article 309 of the Constitution of India as held by the Supreme Court in SITARAM vs. RAMJIBHAI[1].

5. We have heard the learned counsel for the parties at length.

6. It is now admitted that there are no statutory rules regarding promotion of the Malies to the category of Fitters except by way of direct recruitment as provided in G.O.Ms.No.891, dated 2.9.1974. But when the new channel was created by the administrative decision and the qualification was also fixed for governing the said promotion, the said requirement has to be followed in the absence of statutory rule. Therefore, we are satisfied that the order of the Tribunal cannot be said to suffer with any illegality or irregularity. Under those circumstances, we are not inclined to interfere with the order of the Tribunal.

7. Accordingly the Writ Petition is dismissed. However, the physical monetary benefits, which accrued on account of the order passed by the Tribunal, shall be released to the respondents only from the date of the order of the Tribunal i.e., 5.9.2003 in the respective revised scales of pay. No costs.

(G.BIKSHAPATHY, J.)

1st March, 2005.

(P.S.NARAYANA, J.)

SSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Deputy Director of Horticlture, Government Gardens, Public Gardens, Hyderabad.
2 The Commissioner & Director of Horticulture, Government Gardens, Public Gardens, Hyderabad.
3 The Government of A.P., represented by the Secretary, A&C (Horti), Department, Secretariat, A.P., Hyderabad.

4 The Registrar, A.P. Administrative Tribunal, Hyderabad.

5 2 CCs to G.P. for Services-I, High Court of A.P. Hyderabad. (OUT)

6 2 CD copies

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